

Remarks/Arguments

The Examiner has rejected claims 1-4 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,577,370 to Kollross. Further, the Examiner has rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Kollross in view of U.S. Pat. No. 5,085,036 to Evans. For the reasons set forth below, Applicant respectfully traverses the rejections.

Additionally, Applicant hereby submits new claims 5 and 6, which are similar to claims 1 and 2 with the additional requirement that the textured belt be mounted adjacent and parallel only to the top surface of the stuffing tube. For the reasons set forth below, Applicant requests favorable action on these new claims.

Rejection under 35 U.S.C. § 102(b):

Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharm., Inc. v. Mayo Found. for Med. Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing In re Robertson, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571, 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, **including all claim limitations**, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and

that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708, 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)); see also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Independent claims 1 and 2 require, in part, that the textured belt slide the casing towards the discharge end of the stuffing tube and ***into the twisting mechanism.*** (emphasis added).

By contrast, Kollross teaches sliding the casing towards a closure mechanism 66 (Fig. 1) so that clamps 68 may be fastened onto the casing. Alternatively, Kollross teaches sliding the casing towards a closure mechanism (at 140 in Fig. 8d) so that clamps 142 may be fastened onto the casing. The Examiner has stated that the closure mechanism of Kollross is a twisting mechanism within the meaning of Applicant's claims 1 and 2 because "it is inherent that the clip 66 or 142 is twisted about the casing". (Final Office Action, page 3). This assertion is incorrect.

"[I]nherency permits, in very limited circumstances, an invention to be anticipated by prior art that is lacking minor, well-known features in the claimed invention." Irah H. Donner, Patent Prosecution: Practice & Procedure Before the U.S. Patent Office 462 (2d ed. 1999). Evidence of inherency "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill." Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 20 U.S.P.Q.2d 1746, 1749-50 (Fed. Cir. 1991). As the Federal Circuit has stated,

"[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient [to establish inherency]." In re Oelrich, 666 F.2d 578, 581 (CCPA 1981); see also In re Rijckaert, 9 F.3d 1531, 1534 (Fed. Cir. 1993); Rohm & Haas Co. v. Lonza, Inc., 42 F. Supp. 2d 509, 513 (E.D. Pa. 1999). "Rather the evidence must show that the limitation or characterization is necessarily and inevitably inherent in the practice of the invention." Chemithon Corp. v. Procter & Gamble Co., 287 F. Supp. 291, 304 (D. Md. 1968).

Kollross discloses a closure mechanism 66 (or at 140), which is very different in the art than a twisting mechanism. As stated by the Examiner, Kollross uses a closure mechanism substantially similar to that disclosed in U.S. Pat. No. 6,146,261 to Bienert et al. ("Bienert"). With reference to Fig. 1 of Bienert, a sealing machine 22 is provided for fastening clips 24 and 26 to the casing 16. As stated in Bienert, the casing 16 "is sealed at its second end with two closure clips 24 and 26 by means of a sealing machine 22. Then, the packaging casing is cut through between the two closure clips". (col. 4, lines 9-13). Bienert fails to disclose twisting the casing during the process but rather teaches the use of clips, which could not be applied while twisting the casing. The same is true for the closure mechanism taught by Kollross.

By contrast, Applicant claims the use of a conventional twisting mechanism, so named in the art because a casing is pulled through the twisting mechanism and then twisted to form the sausage link without the use of a clamp or clip. See, i.e., U.S. Pat. No. RE37,883 to Townsend (disclosing a typical twisting mechanism 20 having a rotatable chuck 34 for rotating the casing 21). Accordingly, as Kollross fails to teach a

twisting mechanism within the meaning well known in the art and required by Applicant's independent claims 1 and 2, the Examiner's rejection based upon anticipation should be withdrawn.

New claims 5 and 6 require, in part, that the textured belt be mounted adjacent and parallel **only to the top surface** of the stuffing tube. (emphasis added).

By contrast, Kollross teaches the use of four belts 40 positioned adjacent the top, bottom, and sides of the stuffing tube 18, as shown in Fig. 1. As such, Kollross fails to meet all elements of new claims 5 and 6, particularly the limitation emphasized above. Accordingly, Applicant requests favorable action on these new claims.

Rejection Under 35 U.S.C. § 103(a):

The teachings or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. See In re Vacck, 997 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); MPEP § 2143. In other words, to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974).

Claims 3 depends from independent claim 2. As discussed above, Kollross fails to teach each and every element of amended independent claim 2.

Accordingly, as the combination of Kollross and Evans does not result in the invention as claimed, the obvious rejection should be withdrawn.

Conclusion

In view of the above amendments and remarks, Applicant believes that claims 1-6 are in condition for allowance, and respectfully requests allowance of such claims. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515-558-0200.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



Timothy J. Zarley
Reg. No. 45,253
ZARLEY LAW FIRM, P.L.C
Capital Square
400 Locust Street, Suite 200
Des Moines, IA 50309-2350
Phone No. (515) 558-0200
Fax No. (515) 558-7790
Customer No. 34082
Attorneys of Record

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